

EXHIBIT 15

1 JEFFREY BOSSERT CLARK
2 Acting Assistant Attorney General
3 Civil Division
4 WILLIAM C. PEACHEY
5 Director, Office of Immigration Litigation –
6 District Court Section
7 SAMUEL P. GO (NY 4234852)
8 Assistant Director
9 KATHERINE J. SHINNERS (DC 978141)
10 Senior Litigation Counsel
11 United States Department of Justice
12 Civil Division
13 Office of Immigration Litigation – District
14 Court Section
15 P.O. Box 868, Ben Franklin Station
16 Washington, D.C. 20044
17 Tel: (202) 598-8259 | Fax: (202) 305-7000
18 ALEXANDER J. HALASKA (IL 6327002)
19 DHRUMAN Y. SAMPAT(NJ 270892018)
20 Trial Attorneys
21 *Counsel for Defendants*

22
23 **UNITED STATES DISTRICT COURT**
24 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
25 **(San Diego)**

26 AL OTRO LADO, Inc., *et al.*,
27
28 *Plaintiffs,*

29 v.
30 CHAD F. WOLF, Acting Secretary, U.S.
31 Department of Homeland Security, in his
32 official capacity, *et al.*,
33
34 *Defendants*

Case No. 3:17-cv-02366-BAS-KSC
Hon. Cynthia A. Bashant

**NOTICE OF MOTION AND
MOTION FOR PROTECTIVE
ORDER CONCERNING ASYLUM
INFORMATION OF POTENTIAL
PRELIMINARY-INJUNCTION
CLASS MEMBERS**

Hearing Date: January 19, 2021

**NO ORAL ARGUMENT UNLESS
REQUESTED BY THE COURT**

MOTION FOR CONFIDENTIALITY PROTECTIVE ORDER
CONCERNING ASYLUM INFORMATION OF POTENTIAL
PRELIMINARY-INJUNCTION CLASS MEMBERS

PLEASE TAKE NOTICE that on January 19, 2021, Defendants will and hereby do move for the entry of a protective order to allow Defendants to produce the asylum information of preliminary-injunction class members and potential preliminary-injunction class members contained in the government's records by placing reasonable limits on Plaintiffs' use and disclosure of that information. The motion is based on the attached memorandum of point and authorities, declaration of counsel, and exhibits.

The parties, through counsel, have conferred extensively regarding the relief sought in this motion from November 11, 2020 to December 8, 2020. *See* Declaration of Katherine J. Shinnars ¶¶ 4-14. Based on these conferences, Defendants understand that Plaintiffs do not oppose the entry of a protective order governing the use and treatment of individuals' asylum information in principle, but they do object to certain of Defendants' proposed restrictions on disclosure as set forth in the attached briefing and declaration. *See id.* ¶¶ 14-15.

Dated: December 15, 2020

Respectfully submitted,

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director

SAMUEL P. GO
Assistant Director

/s/ Katherine J. Shinnars
KATHERINE J. SHINNERS

1 Senior Litigation Counsel
2 United States Department of Justice
3 Civil Division
4 Office of Immigration Litigation
5 P.O. Box 868, Ben Franklin Station
6 Washington, D.C. 20044
7 Tel: (202) 598-8259 | Fax: (202) 305-7000
8 katherine.j.shinners@usdoj.gov

9 ALEXANDER J. HALASKA
10 DHRUMAN Y. SAMPAT
11 Trial Attorneys

12 *Counsel for Defendants*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

No. 17-cv-02366-BAS-KSC

I certify that I served a copy of this document on the Court and all parties by filing this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record.

DATED: December 15, 2020

Respectfully submitted,

/s/ Katherine J. Shinnors

KATHERINE J. SHINNORS

Senior Litigation Counsel

United States Department of Justice

Civil Division

Office of Immigration Litigation

P.O. Box 868, Ben Franklin Station

Washington, D.C. 20044

Tel: (202) 598-8259 | Fax: (202) 305-7000

katherine.j.shinnors@usdoj.gov

Counsel for Defendants

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General,
Civil Division
WILLIAM C. PEACHEY
Director, Office of Immigration Litigation –
District Court Section
SAMUEL P. GO (NY 4234852)
Assistant Director
KATHERINE J. SHINNERS (DC 978141)
Senior Litigation Counsel
United States Department of Justice
Civil Division
Office of Immigration Litigation
P.O. Box 868, Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 598-8259 | Fax: (202) 305-7000
katherine.j.shinners@usdoj.gov
ALEXANDER J. HALASKA (IL 6327002)
DHRUMAN Y. SAMPAT(NJ 270892018)
Trial Attorneys

Counsel for Defendants

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
(San Diego)**

AL OTRO LADO, Inc., *et al.*,

Plaintiffs,

v.

CHAD F. WOLF, Acting Secretary of
Homeland Security, in his official ca-
pacity, *et al.*,

Defendants.

Case No. 3:17-cv-02366-BAS-KSC

Hon. Cynthia A. Bashant

**MEMORANDUM IN SUPPORT OF
DEFENDANTS' MOTION FOR
CONFIDENTIALITY PROTECTIVE
ORDER CONCERNING ASYLUM
INFORMATION OF POTENTIAL
PRELIMINARY-INJUNCTION
CLASS MEMBERS**

INTRODUCTION

Defendants seek the entry of a protective order to place reasonable limits on Plaintiffs' use and disclosure of asylum information about preliminary-injunction class members or potential class members contained in the government's records that will be shared with Plaintiffs in connection with implementation of the Court's October 30 Order (ECF No. 605) and Preliminary-Injunction Order (ECF No. 330). Compliance with the October 30 Order in particular will involve disclosure of sensitive, private asylum information for which special protection is warranted.

Shortly after the Court entered its October 30 Order, Defendants and non-party the Executive Office for Immigration Review (EOIR) proposed to Plaintiffs that the parties seek the Court's approval of a protective order to facilitate information-sharing about potential preliminary-injunction class members with Plaintiffs. A protective order would enable Defendants and EOIR to share such asylum information—the confidentiality of which is protected by regulation, *see* 8 C.F.R. §§ 208.6, 1208.6—in compliance with the October 30 Order, while ensuring limitations on use and further disclosure to third parties that mirror the limitations set forth in those regulations.

Plaintiffs have stated that they do not oppose the entry of a protective order governing the use and disclosure of asylum information of preliminary-injunction class members or potential preliminary-injunction class members. But the parties have been unable to agree on the specific conditions for disclosure of asylum information to third parties (such as class members' family members or other third parties). Defendants' proposed terms generally condition disclosure of information to third parties on specific, written authorization from the individual to whom the information pertains. Defendants' proposed terms also make an exception to allow disclosure absent such written authorization from the asylum-seeker, so long as Defendants and EOIR agree or the Court so orders, and so long as the third party agrees in writing to comply with the terms of the protective order. Defendants' proposed

1 terms also ask Plaintiffs to retain records of such disclosures. Plaintiffs take excep-
2 tion to these limitations on, and accountability for, disclosures of asylum information
3 to third parties. However, allowing disclosure to third parties on the terms Plaintiffs
4 request would remove the safeguards established by regulations to protect asylum
5 applicants.

6 Defendants thus respectfully request that the Court enter Defendants' pro-
7 posed protective order, including these reasonable conditions on disclosure to third
8 parties.

9 **BACKGROUND**

10 **A. Regulatory Protections for Asylum Information**

11 "Mindful . . . that the public disclosure of [information pertaining to an asylum
12 application] could subject an applicant to retaliatory measures in his country of
13 origin and endanger his relatives still residing abroad, the Attorney General has is-
14 sued regulations providing that federal officials must, with limited exceptions, main-
15 tain in confidence information relating to applicants' asylum applications." *Owino*
16 *v. Holder*, 771 F.3d 527, 533 (9th Cir. 2014) (citing, *inter alia*, 8 C.F.R. § 208.6).
17 These regulations provide that, with limited exceptions, "[i]nformation contained in
18 or pertaining to any asylum application, records pertaining to any credible fear de-
19 termination conducted pursuant to [8 C.F.R.] § 208.30, and records pertaining to any
20 reasonable fear determination conducted pursuant to [8 C.F.R.] § 208.31, shall not
21 be disclosed without the written consent of the applicant, except as permitted by this
22 section or at the discretion of the Attorney General." 8 C.F.R. § 208.6(a); *see also* 8
23 C.F.R. § 1208.6(a) (same language as applied to EOIR). The government is also
24 required to protect from disclosure the confidentiality of other records kept by DHS
25 or EOIR "that indicate that a specific alien has applied for asylum, received a credi-
26 ble fear or reasonable fear interview, or received a credible fear or reasonable fear
27 interview." 8 C.F.R. §§ 208.6(b), 1208.6(b). To preserve this confidentiality, third-
28 party recipients of such asylum information are to be "bound by the confidentiality

1 regulations under 8 C.F.R. 208.6,” and “must not disclose the asylum-related infor-
2 mation to other parties, except pursuant to the regulations.” Memorandum from Jo-
3 seph E. Langlois, Director, Asylum Division, USCIS, “Fact Sheet on Confidential-
4 ity” (June 15, 2005) (“Fact Sheet”), *available at* [https://www.uscis.gov/sites/de-](https://www.uscis.gov/sites/default/files/document/memos/fctsheetconf061505.pdf)
5 [fault/files/document/memos/fctsheetconf061505.pdf](https://www.uscis.gov/sites/default/files/document/memos/fctsheetconf061505.pdf).

6 **B. Implementation of The Court’s October 30 Order**

7 The Court’s preliminary-injunction order (“PI Order,” ECF No. 330) enjoined
8 Defendants from applying the Third-Country Transit Rule to a provisional subclass
9 of “non-Mexican asylum-seekers who were unable to make a direct asylum claim at
10 a U.S. POE [port of entry] before July 16, 2019 because of the U.S. Government’s
11 metering policy, and who continue to seek access to the U.S. asylum process.” PI
12 Order at 36. Thus, members of the class are by definition seeking asylum in the
13 United States, and their identities and information relating to their claims to protec-
14 tion are protected from public disclosure by 8 C.F.R. §§ 208.6, 1208.6.

15 The Court’s subsequent Order on Plaintiffs’ Motion for Clarification (“Octo-
16 ber 30 Order,” ECF No. 605), which orders specific acts to be taken in connection
17 with its PI Order, contemplates information-sharing between Defendants and Plain-
18 tiffs about preliminary-injunction class members and potential preliminary-injunc-
19 tion class members, and requires Defendants to “shar[e] information regarding class
20 members’ identities with Plaintiffs.” October 30 Order at 22-25 & ¶ 4. The October
21 30 Order provides that “Defendants must make all reasonable efforts to identify class
22 members, including but not limited to . . . sharing information regarding class mem-
23 bers’ identities with Plaintiffs.” *Id.* at 25 ¶ 4; *see also id.* at 23 (“Defendants must
24 share the information in their custody regarding the identities of class members with
25 Plaintiffs.”). This provision does not by its terms require EOIR to share information
26 from its records.

27 The parties, through counsel, have been engaging in conferences regarding
28 implementation of the Court’s October 30 Order. Shinnars Decl. ¶ 3. In light of the

1 information-sharing contemplated by the October 30 Order, as well as to facilitate
2 the provision of other information to Plaintiffs related to the PI Order's implemen-
3 tation if necessary, the parties engaged in negotiations beginning on November 11,
4 2020, concerning a protective order to govern the use of information about class
5 members of potential class members by Plaintiffs.¹ Shinnery Decl. ¶¶ 4-14. Defend-
6 ants' Proposed Protective Order—which incorporates many provisions requested by
7 Plaintiffs during the course of negotiations—is attached hereto as Exhibit A. *See*
8 Shinnery Decl. ¶¶ 14, 17 & Ex. A.

9 Plaintiffs have stated that they do not oppose the entry of a protective order to
10 govern the use and treatment of asylum information. *See* Shinnery Decl. ¶ 14. How-
11 ever, Plaintiffs oppose the conditions on disclosure to third parties that are set forth
12 in Section VI.B of Defendants' Proposed Protective Order (highlighted for the
13 Court's reference in the attached Exhibit A). Defendants' proposed terms in Section
14 VI.B, which are specifically tailored to the disclosure of asylum information in the
15 government's immigration records, allow disclosure to the following individuals on
16 the following conditions:

17 (1) The individual to whom the asylum information solely pertains. *See* Pro-
18 posed Protective Order § VI.B.4.

19 a. Plaintiffs do not oppose this term.

20 (2) Attorneys who have officially entered their appearance in the immigration
21 case of the individual to whom the information pertains (thus evidencing
22 the asylum applicant's specific authorization to disclose asylum infor-
23 mation to that attorney). *See* Proposed Protective Order § VI.B.4.

24
25 ¹ The parties to the litigation had previously entered into a confidentiality protective
26 order governing conditions on the use and disclosure of confidential information
27 produced by either side in discovery. *See* ECF No. 276. That protective order did
28 not specifically allow the government to produce asylum information, nor was it
tailored to the circumstances of sharing asylum information from the government's
immigration records for purposes of the preliminary injunction.

- 1 a. Plaintiffs maintain that they should be permitted to disclose asylum
2 information to any attorney of the asylum applicant without specific
3 authorization from the applicant, and that the attorney need not have
4 entered his/her appearance in the applicant's immigration case.

5 (3) Any individual to whom the asylum applicant has specifically authorized
6 disclosure in writing. *See* Proposed Protective Order § VI.B.5. This lan-
7 guage tracks the language of the regulation that provides that such infor-
8 mation "shall not be disclosed without the written consent of the appli-
9 cant." *See* 8 C.F.R. §§ 208.6(b), 1208.6(b).

- 10 a. Plaintiffs maintain that they should be permitted to share asylum in-
11 formation with the asylum applicant's undefined "family members,"
12 without evidence of the applicant's authorization;

- 13 b. Plaintiffs also maintain that applicants' family members and attor-
14 neys should be permitted to provide written or oral consent to further
15 authorize sharing of that information with still other third parties;

- 16 c. Plaintiffs also maintain that they should be permitted to share asy-
17 lum applicants' information with an individual based on the appli-
18 cant's oral consent, and without making any record of such disclo-
19 sures (see below).

20 (4) Any individual to whom the parties agree the information may be dis-
21 closed, or to whom the Court orders information to be disclosed, and who
22 agrees to abide by the terms of the protective order. *See* Proposed Protec-
23 tive Order § VI.B.6.

- 24 a. Plaintiffs do not object to this term.

25 *See* Shinnars Decl. ¶ 15. Defendants' Proposed Protective Order also includes a pro-
26 vision in the final paragraph of Section VI.B that the receiving party retain records
27 of disclosures made to third parties. Plaintiffs object to this term as burdensome and
28

unnecessary, *see* Shinners Decl. ¶ 9, but these record-keeping requirements are included to ensure accuracy and accountability in making third-party disclosures.

Defendants maintain that these provisions are appropriate in light of the regulatory protections of confidentiality, and that the restrictions on disclosure are narrowly tailored to permit disclosure in accordance with those regulations. On December 7, 2020, the parties determined that they were at an impasse on these provisions. Shinners Decl. ¶¶ 13-15. To facilitate the provision of information about preliminary-injunction class members and potential preliminary-injunction class members in the meantime, Defendants offered that the parties seek entry of a temporary protective order that includes Defendants' proposed terms pending resolution of the parties' dispute about further sharing of information with third parties, but Plaintiffs declined.

ARGUMENT

Upon a showing of good cause, the Court may enter a protective order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c). "Protective orders governing the handling of confidential information exchanged in discovery are routinely approved by courts in civil cases." *Quality Inv. Properties Santa Clara, LLC v. Serrano Elec., Inc.*, 2010 WL 2889178, at *1 (N.D. Cal. July 22, 2010); *see also* *Satmodo, LLC v. Whenever Commc'ns, LLC*, No. 3:17-cv-192-AJB-NLS, 2018 WL 1071707, at *3 (S.D. Cal. Feb. 27, 2018). As this Court has recognized, asylum information warrants special limitations on disclosure to the public and third parties. *See, e.g.*, Order on Motion to Enforce (ECF No. 607) at 13-14 & n.4; *A.B.T. v. U.S. Citizenship & Immigration Servs.*, No. 2:11-CV-02108 RAJ, 2012 WL 2995064, at *6 (W.D. Wash. July 20, 2012) (granting motion for a protective order to conceal the identities of Plaintiff asylum applicants). "An asylum-seeker's interest in ensuring their personal safety by preventing public disclosure of this information is critically important." Order on Motion to Enforce (ECF No. 607) at 13-14.

1 Good cause exists for entry of the protective order that Defendants request to
2 facilitate information-sharing required and contemplated by this Court's orders with
3 respect to its preliminary injunction. The Court's orders contemplate that Defend-
4 ants will need to share lists of potential preliminary-injunction class members, which
5 will identify individuals as asylum applicants. *See* October 30 Order at 22-23. Based
6 on prior requests from Plaintiffs, Defendants also anticipate that the sharing of other
7 asylum information pertaining to potential preliminary –injunction class members—
8 including information from EOIR's records—will aid information-sharing between
9 the parties and assist in implementation of the PI Order and/or the October 30 Order.
10 The Proposed Protective Order's terms are meant to ensure that the parties maintain
11 confidentiality over this sensitive, private asylum information. If such information—
12 which includes the fact that an individual has sought asylum or similar protection as
13 well as the details of the claim—is, even inadvertently, shared with individuals who
14 do not have the asylum applicant's interests in mind, it “could subject an applicant
15 to retaliatory measures in his country of origin and endanger his relatives still resid-
16 ing abroad.” *Owino*, 771 F.3d at 533. For these reasons, other district courts have
17 approved the entry of similar protective orders governing information-sharing about
18 class members as required by injunctive-relief orders. *See* Shinnery Decl. Ex. B (pro-
19 tective order entered in *Martinez-Banos v. Godfrey*, No. 2:16-cv-01454-JLR (W.D.
20 Wash. May 24, 2018) & Ex. C (protective order entered in *Aleman-Gonzalez v. Barr*,
21 No. 3:18-cv-01869 (N.D. Cal. July 13, 2018).

22 Because the protective order is designed to address only the sharing of asylum
23 information from the government's records that is subject to 8 C.F.R. §§ 208.6 and
24 1208.6, Defendants' proposed limitations on disclosure to third parties mirror the
25 conditions and limitations set forth in the applicable regulations. These provisions
26 are designed to further the safeguards set forth in these regulations by obtaining
27 Plaintiffs' agreement not to disclose information to third parties, absent specific,
28 written authorization from the asylum applicant to whom the information pertains.

1 In some respects, these conditions are thus less restrictive than the prior confidenti-
2 ality order, in that disclosure may be made in accordance with the asylum applicant's
3 specific, written authorization without requiring the party to whom the information
4 is disclosed to adhere to the terms of the protective order. *Compare* Stipulated Pro-
5 tective Order (ECF No. 276) § VI.C with Ex. A, Proposed Protective Order § VI.B;
6 *see also* Model Protective Order for the Southern District of California ¶¶ 7-10 (set-
7 ting forth restrictions on disclosure), *available at*
8 [https://www.casd.uscourts.gov/_assets/pdf/forms/Model%20Protective%20Or-](https://www.casd.uscourts.gov/_assets/pdf/forms/Model%20Protective%20Order.pdf)
9 [der.pdf](https://www.casd.uscourts.gov/_assets/pdf/forms/Model%20Protective%20Order.pdf).

10 Further, the Proposed Protective Order also allows for disclosure to others
11 without obtaining such authorization from the applicant, if Defendants and EOIR or
12 the Court approves, and if the individual to whom the information will be disclosed
13 signs on to the terms of the protective order.

14 Plaintiffs claim that these disclosure conditions are too rigid. But the excep-
15 tions that Plaintiffs request would undermine the safeguards for an individual's asy-
16 lum information by allowing disclosures without evidence that the individual spe-
17 cifically authorized such disclosures. Nor can Plaintiffs demonstrate a need for such
18 unprecedented and liberal disclosure terms.

19 First, Plaintiffs maintain that they should be permitted to share asylum infor-
20 mation with the asylum applicant's undefined "family members," without *any* au-
21 thorization from the applicant. But without written, specific authorization from the
22 asylum applicant, there is no way to determine whether the disclosure to the family
23 member would potentially subject the applicant or the applicant's other relatives or
24 associates to retaliation based on the asylum claim. The same reasoning holds true
25 for allowing disclosure to attorneys to whom the applicant has not specifically au-
26 thorized disclosure of *asylum-related* information (as would be evidenced by the
27 attorney's entry of appearance in the immigration case to which the asylum applica-
28 tion pertains). And Plaintiffs' request that family members or attorneys should in

1 turn be permitted to authorize disclosure of this information to yet *other* third par-
2 ties—again with no consent of the applicant—only compounds the possibility of
3 harm resulting from disclosure.

4 Second, Plaintiffs maintain that they should be permitted to share asylum in-
5 formation after obtaining only the oral consent of the potential preliminary-injunc-
6 tion class member. This would again remove the safeguards for asylum information
7 by allowing approval to be given under circumstances where the asylum applicant
8 may not understand the import of the authorization and may not realize that he is
9 authorizing disclosure of information related to his asylum claim. Moreover, there
10 is no way for the government to establish the authenticity of the oral consent or doc-
11 ument such consent that would comply with the regulations that specifically limits
12 authorization to “written consent of the applicant.” 8 C.F.R. §§ 208.6(b), 1208.6(b).
13 A written, signed disclosure as required by the regulations will ensure that the appli-
14 cant specifically authorizes specific disclosure to specific individuals.

15 Third, Plaintiffs object to the Proposed Protective Order’s requirement that
16 they keep records of disclosures to third parties. *See* Proposed Protective Order
17 § VI.B (last paragraph). This provision is meant to ensure accountability for disclo-
18 sures and adherence to the terms of the Protective Order, as well as to retain records
19 for purposes of tracking future unauthorized disclosures by those third parties, if any.
20 *See* Proposed Protective Order § VIII (governing steps to take to remedy unauthor-
21 ized disclosure).

22 Plaintiffs posit that these terms are too restrictive and that they must have
23 more flexibility in divulging asylum information to third parties because they antic-
24 ipate “logistical challenges in communicating with and getting signed documents
25 from PI class members.” Shinnars Decl. ¶ 8. Yet, even if this turned out to be true—
26 and Plaintiffs have not yet cited any instance in which they were unable to obtain a
27 written disclosure authorization from a potential preliminary-injunction class mem-
28 ber—they could then obtain approval to disclose the information to specific third

1 parties under Section VI.B.6 of Defendants’ Proposed Protective Order on a case-
2 by-case basis, as needed. Plaintiffs and their counsel are also not prevented from
3 obtaining information from potential preliminary-injunction class members’ family
4 members, they are merely asked not to divulge asylum information to those family
5 members unless the terms of disclosure are met. And Plaintiffs’ claim that Class
6 Counsel’s “professional ethical obligations” will require them to act with adequate
7 care is belied by their insistence on disclosing asylum information to individuals
8 without the asylum applicant’s written permission or other safeguards, thereby po-
9 tentially exposing the applicant to a risk of retaliation.

10 Defendants’ Proposed Protective Order reasonably balances the needs of
11 Class Counsel with the safeguards for the asylum information of class members.

12 CONCLUSION

13 For the foregoing reasons, this Court should enter Defendants’ Proposed Pro-
14 tective Order.

1 DATED: December 15, 2020

Respectfully submitted,

2 JEFFREY BOSSERT CLARK
3 Acting Assistant Attorney General,
4 Civil Division

5 WILLIAM C. PEACHEY
6 Director

7 SAMUEL P. GO
8 Assistant Director

9 /s/ Katherine J. Shinnors
10 KATHERINE J. SHINNERS
11 Senior Litigation Counsel
12 United States Department of Justice
13 Civil Division
14 Office of Immigration Litigation
15 District Court Section
16 P.O. Box 868, Ben Franklin Station
17 Washington, D.C. 20044
18 Tel: (202) 598-8259 | Fax: (202) 305-7000
19 katherine.j.shinnors@usdoj.gov

20 *Counsel for Defendants*
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Al Otro Lado v. Wolf, No. 17-cv-02366-BAS-KSC (S.D. Cal.)

I certify that I served a copy of this document and its attachments on the Court and all parties by filing this document with the Clerk of the Court through the CM/ECF system, which will provide electronic notice and an electronic link to this document to all counsel of record.

DATED: December 15, 2020

Respectfully submitted,

/s/ Katherine J. Shinnors

KATHERINE J. SHINNORS

Senior Litigation Counsel

United States Department of Justice

1 JEFFREY BOSSERT CLARK
2 Acting Assistant Attorney General
3 Civil Division
4 WILLIAM C. PEACHEY
5 Director, Office of Immigration Litigation –
6 District Court Section
7 SAMUEL P. GO
8 Assistant Director
9 KATHERINE J. SHINNERS (DC 978141)
10 Senior Litigation Counsel
11 United States Department of Justice
12 Civil Division
13 Office of Immigration Litigation – District Court Section
14 P.O. Box 868, Ben Franklin Station
15 Washington, D.C. 20044
16 Tel: (202) 598-2859 | Fax: (202) 305-7000
17 katherine.j.shinners@usdoj.gov
18 *Counsel for Defendants*

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
16 **(San Diego)**

17 AL OTRO LADO, Inc., *et al.*,
18 *Plaintiffs,*
19 v.
20 CHAD F. WOLF, Acting Secretary, U.S.
21 Department of Homeland Security, in his
22 official capacity, *et al.*,
23 *Defendants*

Case No. 3:17-cv-02366-BAS-KSC

Hon. Cynthia A. Bashant

**DECLARATION OF KATHERINE
J. SHINNERS IN SUPPORT OF
DEFENDANTS’ MOTION FOR
CONFIDENTIALITY PROTEC-
TIVE ORDER CONCERNING
ASYLUM INFORMATION OF
POTENTIAL PRELIMINARY-
INJUNCTION CLASS MEMBERS**

DECLARATION OF KATHERINE J. SHINNERS

I, Katherine J. Shinnars, declare as follows:

1. I am Senior Litigation Counsel with the District Court Section of the U.S. Department of Justice, Office of Immigration Litigation. I represent the federal defendants in their official capacities in the case entitled *Al Otro Lado, Inc. v. Wolf*, No. 3:17-cv-02366-BAS-KSC, which is currently pending in the U.S. District Court for the Southern District of California.

2. I make this declaration to provide information with respect to Defendants' Motion for Confidentiality Protective Order Concerning Asylum Information of Potential Preliminary-Injunction Class Members, which requests that the Court enter Defendants' Proposed Protective Order Regarding Preliminary-Injunction Subclass Members' Protected Information. These statements are based on my personal knowledge.

Negotiations Between the Parties and Current Dispute

3. Plaintiffs' and Defendants' counsel have conferred over the telephone and via email and letter concerning implementation of the Court's October 30 Order on Plaintiffs' Motion to Clarify (ECF No. 605), which contains requirements for identification of, notice to, and particular relief to be afforded to, members of the subclass certified in the Court's prior Preliminary Injunction Order (ECF No. 330), referred to herein as the "preliminary-injunction subclass."

4. On November 11, 2020, in response to a request from Plaintiffs' counsel for information about the substance of certain individuals' immigration cases, Defendants proposed via email to Plaintiffs' counsel that the parties "file a joint motion to amend the Protective Order (ECF No. 276) or for entry of a discrete protective order to expressly allow Defendants to share with Plaintiffs' counsel information [about preliminary-injunction subclass members] that is protected under 8 C.F.R. §§ 208.6 or 1208.6."

1 5. On Friday, November 13, 2020, Plaintiffs’ counsel provided Defend-
2 ants’ counsel with a draft joint motion to amend the Protective Order.

3 6. On Wednesday, November 18, 2020, Defendants’ counsel provided a
4 draft of a new, separate protective order for Plaintiffs’ consideration. This draft was
5 created from scratch—rather than as an amendment to the prior confidentiality pro-
6 tective order—to tailor the confidentiality provisions to facilitate the sharing of asy-
7 lum information for purposes of the Court’s October 30 Order.

8 7. Counsel for the parties continued to exchange drafts of the proposed
9 protective order, and they met and conferred regarding the proposed terms via tele-
10 phone on November 24, 2020.

11 8. On November 25, 2020, Plaintiffs’ counsel sent Defendants’ counsel a
12 letter stating, among other things, that they disagree with certain features of the pro-
13 tective order. As relevant to the current dispute, Plaintiffs expressed disagreements
14 with certain limitations on disclosure of class members’ asylum information to third
15 parties: “Plaintiffs do not agree to limit those with whom they may share ‘Asylum
16 Material’ to Counsel of Record, court personnel, the individual noncitizen to whom
17 such information pertains and his or her attorney or accredited representative as
18 demonstrated by a filed G-28, a filed EOIR-27, or a DHS Privacy Waiver.” The
19 letter stated that Plaintiffs were “not willing to prematurely limit the individuals with
20 whom they may share ‘Asylum Material,’ given the anticipated logistical challenges
21 in communicating with and getting signed documents from PI class members. The
22 requirement that Plaintiffs may only use ‘Asylum Material’ for the limited purpose
23 of facilitating compliance with the Court’s orders, coupled with the independent pro-
24 fessional ethical obligations that apply to Plaintiffs’ counsel serving the role of class
25 counsel, already require Plaintiffs to proceed with appropriate care in the storage and
26 use of class member information.” Plaintiffs’ November 25 letter made no mention
27 of the other provisions of the protective order that allowed for disclosure to other
28 individuals as the need arises, upon agreement of the parties or order of the Court,

1 so long as those individuals sign on to the terms of the protective order.

2 9. In their November 25, 2020 letter, Plaintiffs' counsel also stated that
3 "Plaintiffs do not agree to maintain records of disclosures to PI class members or
4 their representatives to be produced at Defendants' request." At the November 24,
5 2020, telephone conference, as well as at subsequent telephone conferences, Plain-
6 tiffs' counsel argued that this requirement was burdensome and unnecessary.

7 10. Plaintiffs requested a response to their November 25, 2020 letter by
8 December 2, 2020. Defendants served a response letter on December 2, 2020.

9 11. On Friday, December 4, 2020, the parties again conferred via telephone
10 concerning numerous topics, including the proposed protective order.

11 12. The evening of Friday, December 4, 2020, Plaintiffs proposed revised
12 language concerning the conditions for disclosure to third parties. On Monday, De-
13 cember 7, 2020, I sent Plaintiffs an email providing Defendants' response to those
14 revisions and offering that, if the parties could not come to an agreement, "the parties
15 could agree to ask the Court to enter the more stringent version of the protective
16 order pending resolution of those disputes, to facilitate Defendants' disclosure of
17 information in the meantime."

18 13. Plaintiffs' counsel responded via email on December 8, 2020, that "it
19 is clear that the parties are at an impasse."

20 14. On December 8, 2020, I sent Plaintiffs' counsel an email attaching a
21 proposed protective order that incorporated recent revisions, stating that Defendants
22 intended to seek the entry of a protective order in substantially the form of the at-
23 tached order, and seeking to confirm Plaintiffs' position that "Plaintiffs do not gen-
24 erally oppose the entry of a protective order governing the use and disclosure of
25 208.6 information concerning class members and potential class members," but that
26 Plaintiffs' counsel take issue with certain conditions of disclosure to third parties
27 contained in the version attached.

28 15. Based on the conferences of counsel and the exchanged drafts, emails

1 and letters, I understand Plaintiffs' disagreement with Defendants' requested condi-
2 tions on disclosure of asylum information of preliminary-injunction subclass mem-
3 bers to third parties to be as follows:

- 4 a. Plaintiffs maintain they should be permitted to disclose asylum infor-
5 mation to any attorney of the asylum applicant to which the information
6 pertains, regardless of whether that attorney has entered their appear-
7 ance in the applicant's immigration case.
- 8 b. Plaintiffs maintain they should be permitted to share asylum infor-
9 mation with the asylum applicant's "family members" without obtain-
10 ing the applicant's prior consent.
- 11 c. Plaintiffs maintain that asylum applicants' family members and attor-
12 neys should be permitted to consent to further sharing of asylum infor-
13 mation to still other individuals.
- 14 d. Plaintiffs maintain that they should be permitted to share asylum infor-
15 mation with third parties based only on the applicant's oral (vs. written)
16 consent.
- 17 e. Plaintiffs maintain that they should not be required to retain records of
18 disclosures of asylum information to third parties.

19 16. At no point have Defendants refused to comply with the information-
20 sharing provisions of the Court's October 30, 2020 Order. Defendants have merely
21 requested that the parties agree to reasonable limitations on further disclosure of that
22 information prior to its production. Until recently, the parties were actively engaged
23 in negotiations regarding such limitations. Defendants have also offered to facilitate
24 the sharing of such information by seeking the entry of a temporary protective order
25 pending resolution of the current dispute.

26 **Defendants' Exhibits**

27 17. Attached hereto as Exhibit A is a copy of Defendants' Proposed Pro-
28

1 tective Order Regarding Preliminary-Injunction Subclass Members' Protected Infor-
2 mation, with the disputed provisions highlighted in yellow. This version of the pro-
3 tective order is substantially the same as the version shared with Plaintiffs on De-
4 cember 8, 2020, with minor changes to the preamble but no changes to the substan-
5 tive terms.

6 18. Attached hereto as Exhibit B is a true and correct copy of a protective
7 order entered in *Martinez-Banos v. Godfrey*, No. 2:16-cv-01454-JLR (W.D. Wash.
8 May 24, 2018).

9 19. Attached hereto as Exhibit C is a true and correct copy of a protective
10 order entered in *Aleman-Gonzalez v. Barr*, No. 3:18-cv-01869 (N.D. Cal. July 13,
11 2018).

12 I declare under penalty of perjury that the foregoing is true and correct to the
13 best of my knowledge. This declaration was executed on December 15, 2020, in
14 Washington, D.C.

15 s/ Katherine J. Shinnors
16 KATHERINE J. SHINNERS
17 Senior Litigation Counsel

18 *Counsel for Defendants*
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
10 **(San Diego)**

11 AL OTRO LADO, Inc., *et al.*,

12 *Plaintiffs,*

13
14 v.

15 CHAD F. WOLF, Acting Secretary of
16 Homeland Security, *et al.*, in their offi-
17 cial capacities,

18 *Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

PROTECTIVE ORDER
REGARDING
PRELIMINARY-INJUNCTION
SUBCLASS MEMBERS'
PROTECTED INFORMATION

1 **I. PREAMBLE**

2 **A. Background**

3 On November 19, 2019, this Court entered a preliminary injunction prohibit-
4 ing Defendants from applying the interim final rule entitled “Asylum Eligibility and
5 Procedural Modifications,” 84 Fed. Reg. 33,829 (July 16, 2019), to a provisional
6 subclass of “all non-Mexican asylum-seekers who were unable to make a direct asy-
7 lum claim at a U.S. POE before July 16, 2019 because of the U.S. Government’s
8 metering policy, and who continue to seek access to the U.S. asylum process.” Order
9 Granting Pls.’ Mot. for Provisional Class Certification and Granting Pls.’ Mot. for
10 Prelim. Inj. 36 (ECF No. 330). On October 30, 2020, this Court entered a further
11 order concerning the preliminary injunction. *See* Order Granting Pls.’ Mot. for Clar-
12 ification of the Prelim. Inj. (ECF No. 605). Among other things, that order states:
13 The Executive Office for Immigration Review “is bound by the terms of the prelim-
14 inary injunction”; and, “Defendants must make all reasonable efforts to identify class
15 members ... and shar[e] information regarding class members’ identities with Plain-
16 tiffs.” *Id.* at 25.

17 By regulation, “[i]nformation contained in or pertaining to any asylum appli-
18 cation, records pertaining to any credible fear determination ... , and records pertain-
19 ing to any reasonable fear determination ... shall not be disclosed without the written
20 consent of the applicant.” 8 C.F.R. §§ 208.6(a), 1208.6(a). Further, “[t]he confiden-
21 tiality of other records kept by the Service and the Executive Office for Immigration
22 Review that indicate that a specific alien has applied for asylum, received a credible
23 fear or reasonable fear interview, or received a credible fear or reasonable fear re-
24 view shall also be protected from disclosure.” 8 C.F.R. §§ 208.6(b), 1208.6(b). De-
25 fendants and the Executive Office for Immigration Review are thus prohibited from
26 sharing information with Plaintiffs that would indicate whether an alien, including a
27 known or potential preliminary-injunction subclass member, seeks or sought asylum
28

1 in the United States and thus may be a member of the Preliminary-Injunction Sub-
2 class.

3 **B. Purposes and Limitations**

4 The purpose of this order is to permit Defendants and the Executive Office for
5 Immigration Review to share information protected under 8 C.F.R. §§ 208.6 and
6 1208.6 with Plaintiffs' Counsel for the purpose of facilitating Defendants' and the
7 Executive Office for Immigration Review's compliance with the Order Granting
8 Plaintiffs' Motion for Provisional Class Certification and Granting Plaintiffs' Mo-
9 tion for Preliminary Injunction (ECF No. 330) and the Order Granting Plaintiffs'
10 Motion for Clarification of the Preliminary Injunction (ECF No. 605). Further, the
11 purpose of this order is to establish limits on Plaintiffs' Counsel's use of information
12 protected under 8 C.F.R. §§ 208.6 and 1208.6 and to establish procedures governing
13 Plaintiffs' Counsel's maintenance and use of such information during the pendency
14 of this Action, including any appellate review, and after this Action concludes.

15 This order does not supersede, limit, expand, or otherwise alter the stipulated
16 Protective Order (ECF No. 276) that governs the treatment of confidential or highly
17 confidential information in this litigation, except as expressly stated herein. This or-
18 der does not supersede, limit, expand, or otherwise alter Defendants' and the Exec-
19 utive Office for Immigration Review's obligations under 8 C.F.R. §§ 208.6 and
20 1208.6 except as expressly provided for herein.

21 **C. Good Cause Statement**

22 Good cause exists to grant this Protective Order because the Court's Order
23 Granting Plaintiffs' Motion for Clarification of the Preliminary Injunction (ECF No.
24 605) requires Defendants to "shar[e] information regarding class members' identi-
25 ties with Plaintiffs," and such information is prohibited from disclosure, and its con-
26 fidentiality is protected, by 8 C.F.R. §§ 208.6 and 1208.6. Accordingly, to expedite
27 the flow of information and facilitate compliance with the Court's Order Granting
28 Plaintiffs' Motion for Clarification of the Preliminary Injunction (ECF No. 605), to

adequately protect confidential and sensitive personal asylum-seeker information, to address its handling at the end of the litigation, and to serve the ends of justice, a protective order for such information is justified in this matter.

II. DEFINITIONS

A. Action: *Al Otro Lado, Inc., et al. v. Chad F. Wolf, Acting Secretary of Homeland Security, et al., in their official capacities*, No. 3:17-cv-02366-BAS-KSC (S.D. Cal.), and any appellate proceedings.

B. Agency Counsel: Attorneys who are employees of an agency that a Defendant to this Action leads, or of the Executive Office for Immigration Review. Agency Counsel does not include Counsel of Record or any other outside counsel.

C. Asylum Material: Any documents, information, or items containing any information that is protected from disclosure under 8 C.F.R. § 208.6 or 8 C.F.R. § 1208.6, including, but not limited to, any material that indicates that an individual has applied for asylum, withholding of removal, or protection under the Convention Against Torture in the United States.

D. Challenging Party: A Party that challenges the designation of information or items under this Order.

E. Counsel: Counsel of Record and Agency Counsel (as well as their support staff), and specifically excluding all Parties.

F. Counsel of Record: Attorneys who are not employees of a Party to this Action but represent or advise a Party to this Action or the Executive Office for Immigration Review and have appeared in this Action on behalf of that Party or are employed by the organization or law firms who represent that Party, including support staff.

G. Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Action.

H. Party: Any Party to this Action, including all of its officers, directors, employees, consultants, retained experts, Counsel of Record, and Agency Counsel.

1 **I. Producing Party:** A Party or Non-Party that produces Asylum Material
2 in this Action.

3 **J. Preliminary-Injunction Subclass:** The provisional subclass defined in
4 the Order Granting Plaintiffs' Motion for Provisional Class Certification and Grant-
5 ing Plaintiffs' Motion for Preliminary Injunction (ECF No. 330).

6 **K. Receiving Party:** A Party that receives Asylum Material from a Produc-
7 ing Party.

8 **III. SCOPE**

9 The protections and procedures conferred by this order apply to Asylum Ma-
10 terial, any information copied or extracted from Asylum Material, all copies, ex-
11 cerpts, summaries, or compilations of Asylum Material, and any testimony, conver-
12 sations, or presentations by the Parties or their Counsel that might reveal Asylum
13 Material.

14 **IV. DURATION**

15 The protections and procedures conferred by this order shall remain in effect
16 during the pendency of this Action, including any appellate review, and after this
17 Action concludes, unless and until the Producing Party agrees in writing or a court
18 orders or directs otherwise. The Parties and any other person(s) or entity(ies) subject
19 to the terms of this order agree that this Court shall retain jurisdiction over it and
20 them for the purpose of enforcing this order.

21 **V. PRODUCING ASYLUM MATERIAL**

22 **A. Producing Asylum Material**

23 Defendants and the Executive Office for Immigration Review may produce to
24 Plaintiffs' Counsel information that is protected from disclosure by 8 C.F.R. § 208.6
25 and 8 C.F.R. § 1208.6, to the extent that the information relates to an alien who is
26 known to be or may be a member of the Preliminary-Injunction Subclass, and where
27 producing such information would facilitate Defendants' and the Executive Office
28 for Immigration Review's compliance with the Order Granting Plaintiffs' Motion

1 for Provisional Class Certification and Granting Plaintiffs' Motion for Preliminary
2 Injunction (ECF No. 330) or the Order Granting Plaintiffs' Motion for Clarification
3 of the Preliminary Injunction (ECF No. 605).

4 **B. Designating Asylum Material**

5 Designation in conformity with this order requires the following:

6 **1. For information in documentary form** (*e.g.*, paper or elec-
7 tronic documents, including emails sent between counsel, but excluding transcripts
8 of depositions or other pretrial or trial proceedings): The Producing Party shall, at
9 the time it produces or otherwise discloses Asylum Material pursuant to this order,
10 affix the term "Asylum Material" to each page that contains such material, designate
11 the document or portions thereof as "Asylum Material" by subsequent written notice,
12 or designate as "Asylum Material" the document or portions thereof by written no-
13 tice identifying the document's or documents' Bates number(s), or other identifying
14 characteristics.

15 **2. For information produced in some form other than docu-**
16 **mentary and for any other tangible items:** The Producing Party shall affix the
17 term "Asylum Material" in a prominent place on the exterior of the container or
18 containers in which the information is stored. If only a portion or portions of the
19 information warrants protection, the Producing Party, to the extent practicable, shall
20 identify the protected portion(s).

21 **C. Inadvertent Failure to Designate**

22 If timely corrected, an inadvertent failure to designate information or items as
23 Asylum Material does not waive the Producing Party's right to secure protection
24 under this order for such material. Upon timely correction of a designation, the Re-
25 ceiving Party shall make reasonable efforts to assure that the material is treated in
26 accordance with the provisions of this order. Upon receipt of new copies of any doc-
27 uments or materials bearing corrected "Asylum Material" designations, the Receiv-
28 ing Party shall destroy the original material and certify in writing to the Producing

1 Party that such original material has been destroyed.

2 **VI. ACCESS TO AND USE OF ASYLUM MATERIAL**

3 **A. Use of Asylum Material**

4 A Receiving Party may use Asylum Material to facilitate compliance with any
5 Party's or Non-Party's obligations, if any, under the Order Granting Plaintiffs' Mo-
6 tion for Provisional Class Certification and Granting Plaintiffs' Motion for Prelimi-
7 nary Injunction (ECF No. 330) and the Order Granting Plaintiffs' Motion for Clari-
8 fication of the Preliminary Injunction (ECF No. 605). A Receiving Party may not
9 use Asylum Material in any other manner or for any other purpose. Notwithstanding
10 the foregoing limitation on use of Asylum Material, people listed in subsection
11 VI.B.4 shall not be limited in their use of Asylum Material disclosed to them under
12 that subsection.

13 **B. Disclosure of Asylum Material**

14 Unless otherwise ordered by this Court or permitted in writing by the Produc-
15 ing Party, a Receiving Party may disclose Asylum Material to:

16 1. Counsel of Record who are actively engaged in the action, in-
17 cluding their associates, clerks, paralegals, in-house investigators, stenographic per-
18 sonnel, litigation support contractors, and such other regular and temporary employ-
19 ees who assist Counsel of Record in connection with the Action, including employ-
20 ees of any firm retained to reproduce the Asylum Material for use in accordance with
21 this order;

22 2. Plaintiff Al Otro Lado, including any of its regular or temporary
23 employees, volunteers, or contractors, in accordance with the terms of this order;

24 3. Any court adjudicating this matter, including its judges, law
25 clerks, judicial assistants, clerks, interpreters, and stenographic personnel in connec-
26 tion with the Action, in accordance with the terms of this order;

27 4. The individual to whom the Asylum Material solely pertains, or
28

1 to such individual's attorney or accredited representative (including his or her asso-
2 ciates, clerks, paralegals, in-house investigators, stenographic personnel, litigation
3 support contractors, and such other regular and temporary employees who assist the
4 individual's attorney or accredited representative), provided that the attorney or ac-
5 credited representative has submitted a Form G-28, Notice of Entry of Appearance
6 as Attorney or Accredited Representative; Form EOIR-27, Notice of Entry of Ap-
7 pearance as Attorney or Accredited Representative Before the Board of Immigration
8 Appeals; or Form EOIR-28, Notice of Entry of Appearance as Attorney or Repre-
9 sentative Before the Immigration Court, as appropriate;

10 **5.** Any person who the individual to whom the Asylum Material
11 solely pertains has given written consent to share such material with. Written con-
12 sent must be evidenced by the individual's completion of Form DOJ-361, including
13 the section titled "Authorization to Release Information to Another Person"; or by a
14 written statement by the individual authorizing release of asylum information to a
15 specific person or people, that includes the signature of the individual who is author-
16 izing release;

17 **6.** Any other person or entity upon such terms and conditions as the
18 Parties and the Executive Office for Immigration Review may agree or as the Court
19 may hereafter order, subject to that person or entity's written agreement to the terms
20 of this order.

21 Records of each disclosure provided for in Sections VI.B.4, VI.B.5, and
22 VI.B.6 shall be preserved by each of the Parties while the Action is pending and
23 shall be provided to the Parties or the Executive Office for Immigration Review upon
24 request and to the Court upon its order.

25 **C. Filing Asylum Material**

26 To the extent that a Receiving Party wishes to include Asylum Material or
27 information derived from Asylum Material in any court filing or other court presen-
28 tation in this Action, the Receiving Party shall obtain the advance written consent of

1 the Producing Party to the disclosure of such materials; obtain an order of the Court,
2 after reasonable written notice and a reasonable opportunity for the Producing Party
3 to be heard, permitting the disclosure of such materials; or apply to file, and then, if
4 permission is granted by the Court, subsequently file the materials under seal pursu-
5 ant to Civil Local Rule 79.2 and the Court's Standing Order.

6 Nothing shall be filed under seal, and the Court shall not be required to take
7 any action, without separate prior order by the Judge before whom the hearing or
8 proceeding will take place, after application by the Party with appropriate notice to
9 the opposing Party(ies). The Parties shall follow and abide by applicable law, in-
10 cluding Civil Local Rule 79.2, ECF Administrative Policies and Procedures § II.j,
11 and the Judge's standing order or chamber's rules, with respect to filing documents
12 under seal.

13 **VII. ASYLUM MATERIAL SUBPOENAED OR ORDERED PRODUCED**
14 **IN OTHER LITIGATION**

15 If a Receiving Party receives a subpoena or other compulsory process from a
16 person or entity that is not a Defendant in this Action or the Executive Office for
17 Immigration Review seeking production or other disclosure of Asylum Material,
18 then that Party: (a) shall give electronic notice to the Producing Party within five (5)
19 business days after receipt of the subpoena or other compulsory process identifying
20 the Asylum Material sought and enclosing a copy of the subpoena or other compul-
21 sory process; (b) shall promptly notify in writing the party who caused the subpoena
22 or other compulsory process to issue that some or all of the material sought is subject
23 to this Order; (c) shall cooperate with respect to all reasonable procedures sought to
24 be pursued by the Producing Party, including objecting and seeking a protective or-
25 der in the litigation in which the subpoena or other compulsory process issued; and
26 (d) if a protective order is sought or another form of objection to production is made,
27 shall not produce the Asylum Material called for prior to receiving a court order or
28

1 the consent of the Producing Party. In the event that such Asylum Material is pro-
2 duced, such material shall still be treated as Asylum Material as appropriate by the
3 Parties to this order.

4 **VIII. UNAUTHORIZED DISCLOSURE OF ASYLUM MATERIAL**

5 If a Receiving Party learns that, by inadvertence or otherwise, it or a person
6 or entity to whom it has disclosed Asylum Material in accordance with this order
7 has disclosed Asylum Material to any person or entity or in any circumstance not
8 authorized under this order, the Receiving Party shall upon learning of the unauthor-
9 ized disclosure:

10 1. promptly notify the person(s) or entity to whom the unauthorized
11 disclosure was made that the unauthorized disclosure contains Asylum Material sub-
12 ject to this order;

13 2. promptly make all reasonable efforts to obtain the return of the
14 Asylum Material and to prevent further unauthorized disclosure of the Asylum Ma-
15 terial , including requesting the person(s) or entity who received the unauthorized
16 disclosure to agree to be bound by the terms of this order by executing a declaration
17 in the form included at the end of this order; and

18 3. within five (5) business days notify the Producing Party and all
19 other Parties to this order of the identity of the person(s) or entity to whom the un-
20 authorized disclosure was made, the circumstances surrounding the disclosure, and
21 the steps taken to prevent any use or further disclosure of the Asylum Material that
22 was the subject of unauthorized disclosure.

23 **IX. DISPOSITION OF ASYLUM MATERIAL**

24 **A. Disposition of Materials Relating to Aliens Who Are Not Members**
25 **of the Provisional Subclass**

26 If Plaintiffs learn, by notification from Defendants or the Executive Office for
27 Immigration Review or otherwise, that Defendants or the Executive Office for Im-
28 migration Review have produced Asylum Material that relates to an alien whom the

Parties agree or the Court determines is not a member of the Provisional Subclass, Plaintiffs, within thirty (30) days, shall take reasonable steps to destroy or return to the Producing Party the Asylum Material that relates to the alien.

B. Final Disposition

Unless otherwise agreed in writing, within 90 days of the conclusion of the Action (defined as the exhaustion of all appeals by any Party to the Action) or the conclusion of all efforts to comply with the Order Granting Plaintiffs' Motion for Provisional Class Certification and Granting Plaintiffs' Motion for Preliminary Injunction (ECF No. 330) and the Order Granting Plaintiffs' Motion for Clarification of the Preliminary Injunction (ECF No. 605), whichever is later, Plaintiffs must take reasonable steps to destroy or return Asylum Material to the Producing Party.

C. Permissible Retention

In disposing of Asylum Material as provided for in Sections IX.A and IX.B, counsel may retain that counsel's work-product materials and their file copies of all expert reports, papers filed with the Court, correspondence, transcripts, or deposition or trial exhibits. Any such work-product materials or papers shall continue to be treated pursuant to the terms of this order.

Materials that exist on back-up tapes, systems, or similar storage need not be immediately deleted or destroyed, and, instead, such materials may be overwritten and destroyed in the normal course of business. Until they are overwritten in the normal course of business, Plaintiffs' Counsel shall take reasonable steps to limit access, if any, to the persons necessary to conduct routine IT and cybersecurity functions.

Nothing in Section IX permits or shall be construed to permit the use of Asylum Material in any manner except as permitted in Section VI.A.

X. MISCELLANEOUS

A. Right to Further Relief

Nothing stated herein shall preclude any Party or the Executive Office for

1 Immigration Review from applying to the Court for any modification of the terms
2 provided herein, as it may deem appropriate under the circumstances; provided,
3 however, that prior to such application, the Parties and the Executive Office for Im-
4 migration Review shall make a good faith effort to resolve the matter by agreement.

5 **B. Non-Waiver**

6 Entering into, agreeing to, producing or receiving Asylum Material, or other-
7 wise complying with the terms of this order shall not operate as or constitute a waiver
8 by any Party or the Executive Office for Immigration Review of any right to chal-
9 lenge, seek clarification of, or seek modification of the Order Granting Plaintiffs'
10 Motion for Provisional Class Certification and Granting Plaintiffs' Motion for Pre-
11 liminary Injunction (ECF No. 330) or the Order Granting Plaintiffs' Motion for Clar-
12 ification of the Preliminary Injunction (ECF No. 605), nor shall it prevent the Parties
13 or the Executive Office for Immigration Review from agreeing to alter or waive the
14 provisions or protections provided for herein with respect to particular Asylum Ma-
15 terial.

16 Nothing herein shall be construed to affect in any way the evidentiary admis-
17 sibility of any document, testimony, or other material at any proceeding related to
18 this Action. The designation of certain information as Asylum Material pursuant to
19 this order shall not, for that reason alone, bar its introduction or use in the Action;
20 provided, however, that every effort shall be made to preserve the confidentiality of
21 the Asylum Material.

22 Neither the taking of any action in accordance with the provisions of this order
23 nor the failure to object thereto shall be construed as a waiver of any claim or defense
24 in this case, and the entry of this order shall not be construed as the waiver of any
25 right to object to the furnishing of information in response to discovery and, except
26 as expressly provided, shall not relieve any Party of the obligation of producing in-
27 formation in the course of discovery.

28 Nothing in this order shall limit or reduce the Parties' or the Executive Office

1 for Immigration Review's appellate rights arising from any order or judgment arising from or in connection with the Action.

2
3 Nothing in this order shall bar counsel from rendering advice to their clients
4 with respect to this litigation and, in the course thereof, relying upon any information
5 designated as Asylum Material.

6 **C. Modification by the Court**

7 The Court may modify this order in the interests of justice or for public policy
8 reasons.

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**
3 **(San Diego)**

4 AL OTRO LADO, Inc., *et al.*,

5 *Plaintiffs,*

6 v.
7

8 CHAD F. WOLF, Acting Secretary of
9 Homeland Security, *et al.*, in their offi-
10 cial capacities,

11 *Defendants.*

Case No. 3:17-cv-02366-BAS-KSC

**AGREEMENT TO BE BOUND
BY PROTECTIVE ORDER
REGARDING PRELIMI-
NARY INJUNCTION SUBCLASS
MEMBERS' PROTECTED
INFORMATION**

12 I, _____, have read and understood the Protective
13 Order Regarding Preliminary Injunction Subclass Members' Protected Information
14 entered in the case of *Al Otro Lado, Inc. v. Chad F. Wolf*, No. 3:17-cv-02366-BAS-
15 KSC (S.D. Cal.). I agree to be bound by all of its terms, and further agree, without
16 limitation, to be subject to the jurisdiction of the Court in all matters relating to the
17 enforcement of the Protective Order.

18
19 Dated: _____

SIGNATURE

EXHIBIT B

The Honorable James L. Robart
United States Magistrate Judge Brian A. Tsuchida

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ARTURO MARTINEZ BAÑOS, et al.,

Plaintiffs-

Petitioners,

v.

ELIZABETH GODFREY, et al.,

Defendants-

Respondents.

CASE NO. C16-1454-JLR-BAT

~~PROPOSED~~
STIPULATED
PROTECTIVE ORDER
GOVERNING ITEMS
DISCLOSED BY
RESPONDENTS TO
COMPLY WITH THE
COURT'S FINAL
ORDER GRANTING
INJUNCTIVE RELIEF

1. PURPOSES AND LIMITATIONS

No discovery took place during the pendency of this case. However, on April 4, 2018, this Court issued a final order in this case ("Final Order") imposing compliance requirements on Defendants-Respondents ("Respondents"). *See* Order, ECF. No. 83 ("Final Order"), adopting in its entirety Proposed Order Accompanying R. & R, ECF No. 77-1 ¶¶ 8-14 ("Proposed Order") (setting forth the compliance requirements). Therefore, the parties seek a limited protective order regarding compliance with the Final Order. *See id.* The Court, here, ordered Respondents to grant

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER
[Case No. C16-1454-JLR-BAT] - 1

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
(202) 305-7181

1 bond hearings to class members who had reached 180 days of detention as of the date of this order
2 and to grant bond hearings to class members at every 180-day mark of their detention thereafter;
3 to provide a one-time report to the Court regarding Respondents' compliance with the Court's
4 Order; and to provide notice to class members and class counsel of the custody hearings. *See id.*
5 The Final Order also provides that this Court may "enter further orders as may be necessary or
6 appropriate to implement and enforce the provisions of this Order and Judgment." *See* ECF No.
7 77-1 ¶ 15. Compliance with the Final Order in this case, specifically the requirements to file
8 information with the Court and share information with opposing counsel, will involve disclosure
9 of sensitive, confidential, and/or private information for which special protection is warranted.
10 *See* ECF No. 77-1 ¶¶ 8-14.

11 Accordingly, to adequately and reasonably protect and preserve the confidentiality of such
12 information; to expedite the flow of information between the parties; and to serve the ends of
13 justice, a protective order for such confidential information is justified. Accordingly, the parties
14 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The
15 parties acknowledge that this Stipulated Protective Order is consistent with LCR 26(c). It does not
16 confer blanket protection on all information provided by Respondents to Plaintiffs-Petitioners
17 ("Petitioners"); the protection it affords from public disclosure and use extends only to the limited
18 information or items that are entitled to confidential treatment under the applicable legal principles,
19 and it does not presumptively entitle parties to file confidential information under seal.

20 2. "CONFIDENTIAL INFORMATION"

21 "Confidential Information" shall include any information that is not publicly available and
22 qualifies for protection under applicable law, statutes or regulations, including, but not limited to:
23 (1) the names, addresses, and alien registration number ("A number") of the particular
24 individual(s) to whom information relates and any other personally identifiable information
25 identified in Federal Rule of Civil Procedure 5.2 and Local Civil Rule 5.2(a); (2) any personally
26

1 identifiable information related to third parties other than the individual whose information is being
2 sought; and, (3) any other information protected or restricted from disclosure by state or federal
3 statute or regulation which otherwise could subject either party to civil or criminal penalties or
4 other sanctions in the event of unauthorized disclosure.¹

5 Notwithstanding the general limitations on disclosure to third parties set out in 8 C.F.R. §§
6 208.6 and 1208.6, this Court finds that the exceptions in 8 C.F.R. §§ 208.6(c)(2) and 1208.6(c)(2)
7 apply and direct Respondents to provide the limited information required to be disclosed to
8 Petitioners, per the Court's Final Order (ECF No. 83), in this case.

9 3. SCOPE

10 This Stipulated Protective Order governs only disclosures undertaken to comply with the
11 Court's Final Order in this case. It thus applies only to documents and information that the Final
12 Order requires Respondents to provide to the Court and to Petitioners. *See* ECF Nos. 77-1 ¶¶ 8-
13 14 & 83. It does not apply to any other information or authorize or require any broader disclosure.

14 The protections conferred by this Stipulated Protective Order cover not only those portions
15 of such documents containing Confidential Information (as defined above), but also (1) any
16 information copied or extracted from those portions of documents containing Confidential
17 Information; (2) all copies, excerpts, summaries, or compilations of Confidential Information; and
18 (3) any testimony, conversations, or presentations by parties or their counsel that might reveal
19 Confidential Information.

20 However, the protections conferred by this Stipulated Protective Order do not cover
21 information that is in the public domain or becomes part of the public domain.

22
23
24 ¹ The existence of this Stipulated Protective Order does not necessarily authorize or require the
25 disclosure of all or any information protected from disclosure by statute or regulation. Further,
26 as set forth in Part 3, this Stipulated Protective Order applies only to information that the Court's
Final Order specifically requires Respondents to provide to the Court and Petitioners, and does
not authorize or require broader disclosure to Petitioners. *See* ECF Nos. 77-1 ¶¶ 8-14, 83.

1 This Stipulated Protective Order binds the Parties and their respective agents, successors,
2 personal representatives and assignees.

3 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4 4.1 Basic Principles. Petitioners may use Confidential Information that is disclosed in
5 connection with the Final Order in this case, including all information derived therefrom (subject
6 to applicable rules of evidence and subject to the confidentiality of such information being
7 maintained) only for purposes of litigating this class action. Confidential Information may be
8 disclosed only to the categories of persons and under the conditions described in this Stipulated
9 Protective Order. Confidential Information must be stored and maintained by Petitioners at a
10 location and in a secure manner that ensures that access is limited to the persons authorized under
11 this Stipulated Protective Order.

12 4.2 Disclosure of "Confidential" Information. Unless otherwise ordered by the Court
13 or permitted in writing by the Respondents, Petitioners may disclose any Confidential Information
14 only to:

15 (a) Petitioners' Counsel in this action and any support staff and other
16 employees of such counsel assisting in this action with an appropriate need to know. If any of
17 Petitioners' Counsel, support staff, or other employees cease to represent Petitioners in this action
18 for any reason, such individual shall no longer have access to or be authorized to receive any
19 Confidential Information;

20 (b) the Court, court personnel, and court reporters and their staff;

21 (c) copy or data imaging services retained by counsel to assist in the duplication
22 of Confidential Information, provided that counsel for the party retaining the copy or imaging
23 service instructs the service not to disclose any Confidential Information to third parties and to
24 immediately return all originals and copies of any Confidential Information and protect
25 Confidential Information in accordance with provisions of this Stipulated Protective Order;

(d) the author or recipient of a document containing the Confidential Information or a custodian or other person who otherwise possessed or knew the Confidential Information;

(e) any other person mutually authorized by the parties' counsel to examine such information with an appropriate need to know.

All persons listed in subparagraphs 4.2(c)-(e) to whom Confidential Information is disclosed shall first be required to read the terms of this Stipulated Protective Order and sign a copy of the Acknowledgment and Agreement to be Bound, attached hereto as EXHIBIT A. Counsel for each party shall retain copies of the acknowledgment form for 120 days from the conclusion of the litigation (including any appeals). This requirement does not apply to the disclosure of Confidential Information to the Court and its personnel, including court reporters.

Nothing in this Stipulated Protective Order supersedes existing independent statutory, law enforcement, national security, or regulatory obligations imposed on a party, and this Stipulated Protective Order does not prohibit or absolve the Parties from complying with such other obligations. This Stipulated Protective Order is limited to the Final Order regarding compliance in this case. *See* ECF No. 77-1 ¶¶ 8-12.

4.3 Filing Confidential Information. Before filing Confidential Information with the Court, or discussing or referencing such material in court filings, the filing party shall confer with the Respondents' counsel (where practical, at least seven days prior to the intended filing date) to determine whether Respondents' counsel will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal. The Parties will attempt, to the extent possible, to minimize the volume of material that must be filed under seal.

5. DESIGNATING PROTECTED INFORMATION

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this Stipulated Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. Respondents must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Stipulated Protective Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to impose unnecessary expenses and burdens on other parties) expose Respondents to sanctions.

If it comes to Respondents' attention that information or items that it designated for protection do not qualify for protection, Respondents must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Stipulated Protective Order (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this Stipulated Protective Order must be clearly so designated before or when the material is disclosed.

The Respondents must affix the word "CONFIDENTIAL" to each page of paper or electronic documents that contains Confidential Information. If only a portion or portions of the material on a page qualifies for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by making appropriate markings in the margins).

5.3 Inadvertent Failures to Designate. If Respondents inadvertently fail to designate material as Confidential Information at the time of production, they shall take reasonable steps to notify Petitioners' counsel of its failure within five business days of discovery. Respondents shall

1 promptly supply Petitioners with new copies of any documents bearing corrected confidentiality
2 designations, and Petitioners' counsel shall return or destroy the original materials, and certify in
3 writing to the producing party that such information has been destroyed. Production of such
4 Confidential Information, in and of itself, shall not constitute waiver of any claim of
5 confidentiality.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 Timing of Challenges. Any party may challenge a designation of confidentiality at
8 any time. Unless a prompt challenge to a Respondents' confidentiality designation is necessary to
9 avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant
10 disruption or delay of the litigation, a party does not waive its right to challenge a confidentiality
11 designation by electing not to mount a challenge promptly after the original designation is
12 disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
14 regarding confidential designations without court involvement. Any motion regarding confidential
15 designations or for a protective order must include a certification, in the motion or in a declaration
16 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
17 affected parties in an effort to resolve the dispute without court action. The certification must list
18 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
19 to-face meeting or a telephone conference.

20 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
21 intervention, the Respondents may file and serve a motion to retain confidentiality under Local
22 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
23 persuasion in any such motion shall be on the Respondents. Frivolous challenges, and those made
24 for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other
25
26

parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL," that party must:

(a) promptly notify the Respondents in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Respondents whose confidential Information may be affected, including objecting and seeking a protective order in the litigation in which the subpoena or order issued; and

(d) decline to produce the Confidential Information if an objection has been made until the objection has been resolved unless disclosure, dissemination, or transmission is required by law or court order. Any person, entity or organization who received Confidential Information shall abide by all terms and conditions set forth herein unless otherwise permitted by court order.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If Petitioners' counsel learn that, by inadvertence or otherwise, it has disclosed Confidential Information to any person or in any circumstance not authorized under this

1 agreement, Petitioners' counsel must immediately (a) notify in writing Respondents' counsel of
2 the unauthorized disclosure(s), (b) use their best efforts to retrieve all unauthorized copies of the
3 protected material, (c) inform the person or persons to whom unauthorized disclosures were made
4 of all the terms of this agreement, and (d) request that such person or persons execute the
5 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

6 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
7 MATERIAL

8 When Respondents give notice to Petitioners that certain inadvertently produced material
9 is subject to a claim of privilege or other protection, the obligations of the Petitioners are those set
10 forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
11 whatever procedure may be established in an order that provides for production without prior
12 privilege review. The parties shall confer on an appropriate non-waiver order under Fed. R. Evid.
13 502(d), if deemed necessary.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals, the Petitioners
16 shall destroy all Confidential Information obtained and in its possession, custody, or control,
17 except as this Court may otherwise order. The parties shall agree upon appropriate methods of
18 destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court, and attorney work product, even if such materials contain
21 Confidential Information.

22 The confidentiality obligations imposed by this agreement shall remain in effect until
23 Respondents agree otherwise in writing or a court orders otherwise.

24 11. MISCELLANEOUS

1 11.1 Enforceability Upon Signing. By signing the Stipulated Protective Order, the
2 parties agree to be bound by its terms and until those terms are modified by order of the Court.

3 11.2 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the
4 right of any party to seek its modification by the Court in the future.

5 11.3 Right to Assert Other Objections. By stipulating to entry of this Stipulated
6 Protective Order, no party waives any right it otherwise would have to object to disclosing or
7 producing any information or item on any ground not addressed in this Stipulated Protective Order.

8
9
10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11 DATED: _____

NORTHWEST IMMIGRANT RIGHTS PROJECT

12 s/ Matt Adams

13 MATT ADAMS

14 615 Second Avenue, Suite 400

15 Seattle, WA 98104

(206) 957-8611

16 s/ Leila Kang

17 LEILA KANG

18 615 Second Avenue

19 Seattle, WA 98104

(206) 957-8608

20 s/ Glenda M. Aldana Madrid

21 GLENDA M. ALDANA MADRID

22 615 Second Avenue

23 Seattle, WA 98104

(206) 957-8648

Attorneys for Plaintiffs-Petitioners

24 DATED: _____

CHAD A. READLER

25 Acting Assistant Attorney General

26 Civil Division

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER
[Case No. C16-1454-JLR-BAT] - 10

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
(202) 305-7181

1 WILLIAM C. PEACHEY
2 Director

3 GISELA A. WESTWATER
4 Assistant Director

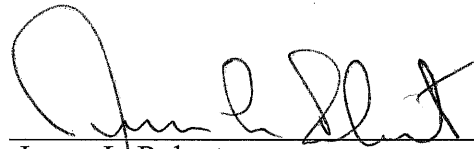
5 By: s/ Sairah G. Saeed
6 SAIRAH G. SAEED
7 Trial Attorney
8 United States Department of Justice
9 Office of Immigration Litigation
10 District Court Section
11 P.O. Box 868, Ben Franklin Station
12 Washington, DC 20044
13 Telephone: (202) 532-4067
14 Facsimile: (202) 305-7000
15 E-mail: sairah.g.saeed@usdoj.gov

16 Attorneys for Defendants-Respondents

17 PURSUANT TO STIPULATION, IT IS SO ORDERED

18 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
19 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
20 in any other court, constitute a waiver by the producing party of any privilege applicable to those
21 documents, including the attorney-client privilege, attorney work-product protection, or any other
22 privilege or protection recognized by law.
23

24 DATED: 24 May 2018

25 
26 James L. Robart
United States District Court Judge

~~PROPOSED~~ STIPULATED PROTECTIVE ORDER
[Case No. C16-1454-JLR-BAT] - 11

Department of Justice, Civil Division
Office of Immigration Litigation
P.O. Box 868 Ben Franklin Station
Washington, D.C. 20044
(202) 305-7181

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in the
case of *Martinez Baños v. Asher*, C16-1454JLR (W.D. Wash. April 4, 2018) . I agree to comply
with and to be bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
of contempt. I solemnly promise that I will not disclose in any manner any information or item
that is subject to this Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

EXHIBIT C

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ESTEBAN ALEMAN GONZALEZ, *et al.*,

Plaintiffs,

v.

JEFFERSON B. SESSIONS III, Attorney
General, Department of Justice, *et al.*,

Defendants.

Case No. 3:18-cv-01869

Class Action

STIPULATION AND ~~PROPOSED~~
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

On June 5, 2018, this Court issued an order granting class certification and a preliminary injunction in this case. *See* Order, ECF. No. 33 (“Order”). Therefore, the parties seek a limited protective order regarding compliance with the Order. The Court enjoined Defendants “from detaining Plaintiffs and the class members pursuant to 1231(a)(6) for more than 180 days without [] providing each a bond hearing before an IJ.” *See id.* at 19. Compliance with the Order will involve disclosure of sensitive, confidential, and/or private information for which special protection is warranted.

Accordingly, to adequately and reasonably protect and preserve the confidentiality of such information, to expedite the flow of information between the parties, and to serve the ends of justice, a protective order for such confidential information is justified. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. It does not confer blanket protection on all information provided by Defendants to Plaintiffs; the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. **“CONFIDENTIAL INFORMATION”**

“Confidential Information” shall include any information that is not publicly available and qualifies for protection under applicable law, statutes or regulations, including, but not limited to: (1) the names, addresses, and alien registration number (“A number”) of the particular individual(s) to whom information relates and any other personally identifiable information identified in Federal Rule of Civil Procedure 5.2; (2) any personally identifiable information related to third parties other than the individual whose information is being sought; and (3) any other information protected or restricted from disclosure by state or federal statute or regulation which otherwise could subject either party to civil or criminal penalties or other sanctions in the event of unauthorized disclosure.¹

The following information is not “Confidential” and therefore not subject to the restrictions applicable to protected information: (a) aggregate information concerning class members that does not permit the identification of the particular individuals to whom the information relates; (b) class member information that is subject to disclosure conditions under 8 C.F.R. §§ 1003.27(c) and 1208.6(a), or the Privacy Act, 5 U.S.C. § 552a, if the class member to whom the information pertains has consented to release of the information in writing; (c) class member information of which the individual class member has explicitly waived his or her relevant confidentiality rights or protections.

¹ The existence of this Stipulated Protective Order does not necessarily authorize or require the disclosure of all or any information protected from disclosure by statute or regulation. Further, this Stipulated Protective Order applies only to information necessary to comply with the Court’s June 5, 2018, Order, and does not authorize or require broader disclosure to Plaintiffs.

Notwithstanding the general limitations on disclosure to third parties set out in 8 C.F.R. §§ 208.6 and 1208.6, this Court finds that the exceptions in 8 C.F.R. §§ 208.6(c)(2) and 1208.6(c)(2) apply and direct Defendants to provide the limited information necessary to be disclosed to Plaintiffs to comply with the Court's Order (ECF No. 33) in this case.

3. SCOPE

This Stipulated Protective Order governs only disclosures undertaken to comply with the Court's Order in this case. *See* ECF No. 33. It does not apply to any other information or authorize or require any broader disclosure.

The protections conferred by this Stipulated Protective Order cover not only those portions of such documents containing Confidential Information (as defined above), but also (1) any information copied or extracted from those portions of documents containing Confidential Information; (2) all copies, excerpts, summaries, or compilations of Confidential Information; and (3) any testimony, conversations, or presentations by parties or counsel that might reveal Confidential Information.

However, the protections conferred by this Stipulated Protective Order do not cover information that is in the public domain or becomes part of the public domain. This Stipulated Protective Order binds the parties and their respective agents, successors, personal representatives and assignees.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

- 4.1 **Basic Principles.** Plaintiffs may use Confidential Information that is disclosed in connection with the Final Order in this case (subject to applicable rules of evidence and subject to the confidentiality of such information being maintained) only for purposes

of litigating this class action. Confidential Information may be disclosed only to the categories of persons and under the conditions described in this Stipulated Protective Order. Confidential Information must be stored and maintained by Plaintiffs at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulated Protective Order.

Nothing in this Order shall preclude the disclosure of Confidential Information to the class member to whom the information pertains. This Order shall not preclude Plaintiffs' Counsel from using the information obtained from Defendants through discovery production, or otherwise, to contact current or former class members, their attorneys or family members.

4.2 Disclosure of "Confidential" Information. Unless otherwise ordered by the Court or permitted in writing by the Defendants, Plaintiffs may disclose any Confidential Information only to:

- (a) Plaintiffs' Counsel in this action and any support staff and other employees of such counsel assisting in this action with an appropriate need to know. If any of Plaintiffs' Counsel, support staff, or other employees cease to represent Plaintiffs' in this action for any reason, such individual shall no longer have access to or be authorized to receive any Confidential Information;
- (b) the Court, court personnel, and court reporters and their staff;
- (c) parties;
- (d) copy or data imaging services retained by counsel to assist in the duplication of Confidential Information, provided that counsel for the party retaining the copy or imaging

service instructs the service not to disclose any Confidential Information to third parties and to immediately return all originals and copies of any Confidential Information and protect Confidential Information in accordance with provisions of this Stipulated Protective Order;

- (e) the author or recipient of a document containing the Confidential Information or a custodian or other person who otherwise possessed or knew the Confidential Information;
- (f) any other person mutually authorized by the parties' counsel to examine such information with an appropriate need to know.

All persons listed in subparagraphs 4.2(d)-(f) to whom Confidential Information is disclosed shall first be required to read the terms of this Stipulated Protective Order and sign a copy of the Acknowledgment and Agreement to be Bound, attached hereto as EXHIBIT A. Counsel for each party shall retain copies of the acknowledgment form for 120 days from the conclusion of the litigation (including any appeals). This requirement does not apply to the disclosure of Confidential Information to the Court and its personnel, including court reporters.

Nothing in this Stipulated Protective Order supersedes existing independent statutory, law enforcement, national security, or regulatory obligations imposed on a party, except as set forth above, and this Stipulated Protective Order does not prohibit or absolve the Parties from complying with such other obligations. This Stipulated Protective Order is limited to compliance with the Court's Order. *See* ECF No. 33.

- 4.3 Filing Confidential Information. Before filing Confidential Information with the Court, or discussing or referencing such material in court filings, the filing party shall confer with the Defendants' counsel (where practical, at least seven days prior to the

intended filing date) to determine whether Defendants' counsel will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the Court to file material under seal. The Parties will attempt, to the extent possible, to minimize the volume of material that must be filed under seal.

- 4.4 Nothing in this Order precludes the disclosure of a document designated "Confidential," so long as the protected information is redacted.

5. DESIGNATING PROTECTED INFORMATION

- 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this Stipulated Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. Defendants must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Stipulated Protective Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to impose unnecessary expenses and burdens on other parties) expose Defendants to sanctions.

If it comes to Defendants' attention that information or items that they designated for protection do not qualify for protection, Defendants must promptly notify all other parties that they are withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Stipulated Protective Order or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this Stipulated Protective Order must be clearly so designated before or when the material is disclosed. The Defendants must affix the word "CONFIDENTIAL" to each page of paper or electronic document that contains Confidential Information.

5.3 Inadvertent Failures to Designate. If Defendants inadvertently fail to designate material as Confidential Information at the time of production, they shall take reasonable steps to notify Plaintiffs' counsel of the failure within five business days of discovering the failure. Defendants shall promptly supply Plaintiffs with new copies of any documents bearing corrected confidentiality designations, and Plaintiffs' counsel shall return or destroy the original materials, and certify in writing to the producing party that such information has been destroyed. Production of such Confidential Information, in and of itself, shall not constitute waiver of any claim of confidentiality.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any party may challenge a designation of confidentiality at any time. A party does not waive its right to challenge a confidentiality designation

by electing not to mount a challenge promptly after the original designation is disclosed.

- 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding confidential designations without court involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.
- 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the Defendants may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 79-5, if applicable). The burden of persuasion in any such motion shall be on the Defendants. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL,” that party must:

- (a) promptly notify the Defendants in writing and include a copy of the subpoena or court order;
- (b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Stipulated Protective Order. Such notification shall include a copy of this agreement;
- (c) cooperate with respect to all reasonable procedures sought to be pursued by the Defendants whose Confidential Information may be affected, including objecting and seeking a protective order in the litigation in which the subpoena or order issued; and
- (d) decline to produce the Confidential Information if an objection has been made until the objection has been resolved unless disclosure, dissemination, or transmission is required by law or court order. Any person, entity or organization who received Confidential Information shall abide by all terms and conditions set forth herein unless otherwise permitted by court order.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If Plaintiffs’ counsel learn that, by inadvertence or otherwise, they have disclosed Confidential Information to any person or in any circumstance not authorized under this

agreement, Plaintiffs' counsel must immediately (a) notify in writing Defendants' counsel of the unauthorized disclosure(s), (b) use their best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When Defendants give notice to Plaintiffs that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Plaintiffs are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an order that provides for production without prior privilege review. The parties shall confer on an appropriate non-waiver order under Fed. R. Evid. 502(d), if deemed necessary.

10. NON-TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals and any monitoring agreed to or ordered, the Plaintiffs shall destroy all Confidential Information obtained and in their possession, custody, or control, except as this Court may otherwise order. The parties shall agree upon appropriate methods of destruction. Notwithstanding this provision, each entity serving as counsel is entitled to retain one archival copy of all Confidential Information. The confidentiality obligations imposed by this agreement shall remain in effect until Defendants agree otherwise in writing or a court orders otherwise.

11. MISCELLANEOUS

11.1 Enforceability Upon Signing. By signing the Stipulated Protective Order, the parties agree to be bound by its terms and until those terms are modified by order of the Court.

11.2 Right to Further Relief. Nothing in this Stipulated Protective Order abridges the right of any party to seek its modification by the Court in the future.

11.3 Right to Assert Other Objections. By stipulating to entry of this Stipulated Protective Order, no party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order.

IT IS SO ORDERED.

Dated: July 13, 2018


Honorable Jacqueline Scott Corley
United States Magistrate Judge

IT IS SO STIPULATED.

DATED: July 12, 2018

Counsel for Plaintiffs

/s/ Marc Van Der Hout
Marc Van Der Hout
Amalia Wille
Judah Lakin
VAN DER HOUT, BRIGAGLIANO &
NIGHTINGALE LLP

Alison Pennington
Lisa Knox
Julia Rabinovich
Jesse Newmark
CENTRO LEGAL DE LA RAZA

Matthew H. Green
LAW OFFICES OF MATTHEW H. GREEN

Michael Kaufman
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTHERN
CALIFORNIA

Vasudha Talla
Julia Mass
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN
CALIFORNIA

Bardis Vakili
AMERICAN CIVIL LIBERTIES UNION
SAN DIEGO AND IMPERIAL COUNTIES

DATED: July 12, 2018

Counsel for Defendants

CHAD A. READLER
Acting Assistant Attorney General
Civil Division

WILLIAM C. PEACHEY
Director
Office of Immigration Litigation

COLIN A. KISOR
Deputy Director

ELIANIS N. PEREZ
Assistant Director

T. MONIQUE PEOPLES
Senior Litigation Counsel

/s/ Matthew P. Seamon
MATTHEW P. SEAMON
CARA E. ALSTERBERG
JULIAN M. KURZ
MARY L. LARAKERS
THEO NICKERSON
Trial Attorneys
U.S. Department of Justice, Civil Division
Office of Immigration Litigation
District Court Section
P.O. Box 868, Washington, DC 20044
Telephone: (202) 598-2648
Facsimile: (202) 305-7000
Matthew.Seamon2@usdoj.gov

EXHIBIT A

**STIPULATION EXHIBIT A
ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print or type full name],
of _____ [print or type full address], declare under penalty
of perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued in the case of *Aleman Gonzalez, et al. v. Sessions, et al.*, pending in the Northern District
of California and bearing Case No. 3:18-cv-01869. I agree to comply with and to be bound by
all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to
so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly
promise that I will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance with the
provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Northern District of California for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____